

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-219365; B-219368

**DATE:** September 4, 1985

**MATTER OF:** Julie Research Laboratories, Inc.

**DIGEST:**

1. Protests based on alleged solicitation defects which are apparent prior to the closing date for receipt of initial proposals must be filed prior to that date.
2. Two untimely protests, one contending that brand name or equal specifications were improperly used, and the second contending that specifications overstate the agency's minimum needs, do not present significant issues within meaning of Bid Protest Regulations since GAO has issued numerous decisions on these issues.

Julie Research Laboratories, Inc. protests two awards by the Navy to the John Fluke Manufacturing Co., Inc. under request for proposals (RFP) Nos. N00123-84-R-0678 (RFP-0678) and N00123-84-R-0847 (RFP-0847). Julie contends that the specifications in both solicitations were unduly restrictive. We dismiss the protests as untimely.

RFP-0678 was synopsisized in the Commerce Business Daily (CBD) on July 13, 1984. The synopsis stated that the RFP was for an automated calibration system, consisting of Fluke components "or equal" and stated that the estimated closing date was August 20. The Navy received two offers by the August 20 closing date. Julie did not respond to the CBD notice or submit a proposal. Award was made to Fluke on March 25, 1985.

RFP-0847 was synopsisized in the CBD on September 8, 1984. The synopsis stated that the RFP was for reference dividers, described the item and listed applicable military specifications. The synopsis stated that the estimated closing date was October 9, but this was extended by

amendment to November 19. The Navy received one proposal by the closing date. Julie did not respond to the CBD notice or submit a proposal. Award was made to Fluke on April 2, 1985.

Julie filed both protests with our Office on May 1.<sup>1/</sup> Julie argues that the Navy improperly used brand name or equal specifications in the calibration system solicitation and that the solicitation for reference dividers overstated the Navy's minimum needs.

The Navy contends that Julie's protests are untimely because they concern allegedly defective specifications which are required to be protested prior to the closing date for receipt of proposals.

In response, Julie maintains that its protests are timely because they were filed within 10 days after April 22, when Julie contends that it first learned of the bases of protest. Julie argues that it did not see the July 13 and September 8 CBD announcements of the solicitations and complains that it was not sent copies of the solicitations.

Our Bid Protest Regulations require that protests based upon alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of initial proposals must be filed before that date. 4 C.F.R. § 21.2(a)(1) (1985). Publication of a notice in the CBD constitutes constructive notice of the solicitation and its contents. Clean Keepers Rubbish Removal, Inc., B-216540, Oct. 22, 1984, 84-2 CPD ¶ 436. Therefore, although Julie maintains that it did not see the CBD announcements, it is charged with notice of the specifications it is protesting and of the closing dates. Since Julie's protests were not filed in our Office until May 1, 1985, several months

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<sup>1/</sup> We did not actually receive the protests until June 5. Since, however, circumstances indicate that they may have been delivered to us on May 1, and misplaced, we have decided to consider the protests as filed on May 1. See Julie Research Laboratories, Inc., B-219363, et al., July 3, 1985, 85-2 CPD ¶ 26.

after the closing dates of August 20, and November 19, 1984, they are untimely. See Airtronix, Inc., B-217087, Mar. 25, 1985, 85-1 CPD ¶ 345.

Regarding Julie's complaint, first raised after receipt of the agency report, that it was not sent a copy of either RFP, there is nothing in the record showing that Julie requested a copy of either RFP or that Julie was on the agency's bidders lists or even requested that it be added to the lists for the items. In these circumstances, the agency had no obligation to send Julie copies of the solicitations, see Resource Engineering, B-216986, Nov. 30, 1984, 84-2 CPD ¶ 615, and Julie cannot rely on its failure to receive these RFPs as a basis for viewing its protest as timely.

Julie also argues that it is an undue burden to require a small business such as it to search the CBD for procurement information. The protester maintains that "each day approximately 1,000 synopses appear in CBD, 6,000 each week and 25,000 each month."

We recently responded to this assertion in another case involving Julie. As we stated in that case, we think Julie exaggerates the effort required to review the CBD. The CBD is broken down by subject categories so that firms need only review those categories of services or supplies which they are capable of providing. Julie, for instance, states in its protests that it makes items in Category 66, "Instruments and Laboratory Equipment." Julie can stay abreast of all procurement actions for Category 66 items by reviewing only this category, which on a typical day contains less than 75 notices.<sup>2/</sup> See Julie Research Laboratories, Inc., B-219363, Aug. 27, 1985, 85-2 CPD ¶ \_\_\_\_.

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<sup>2/</sup> We note that the Congress, in the Competition in Contracting Act of 1984, Pub. L. No. 98-369, title VII, 98 Stat. 1175, and the Small Business and Federal Procurement Competition Enhancement Act of 1984, Pub. L. No. 98-577, title IV, 98 Stat. 3066, 3082, greatly increased the role and importance of the CBD notice in the procurement system, and accordingly anticipates that those interested in federal procurements will make appropriate use of the CBD. See 15 U.S.C.A. § 637 (West Supp. 1985) and 41 U.S.C.A. § 416 (West Supp. 1985).

Julie argues that even if its protests are untimely they should be considered under the exception in our regulations which permits us to consider untimely protests for "good cause" shown. 4 C.F.R § 21.2(c). In this regard, Julie maintains that our Office gives more consideration to the timely filing by the protester than to the seriousness of the protest.

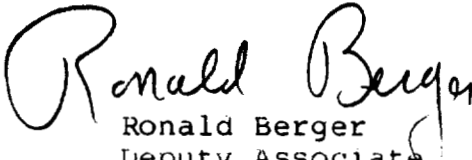
The good cause exception in our regulations is limited to circumstances where some compelling reason beyond the protester's control prevents the timely filing of a protest. Knox Mfg. Co.--Request for Reconsideration, B-218132.2, Mar. 6, 1985, 85-1 CPD ¶ 281. Julie has not offered any explanation of what prevented it from filing on time. Rather, it appears that Julie feels that its protests raise significant issues and that we should consider its untimely protests under the regulatory exception which permits us to consider untimely protests that raise issues significant to the procurement system. 4 C.F.R. § 21.2(c).

These protests do not fall within the significant issue exception, which we construe strictly to prevent our timeliness rules from becoming meaningless. The exception is used where the subject matter of the protest evidences a matter of widespread interest or importance to the procurement community and the matter has not been considered on the merits in previous decisions. Detroit Broach and machine, B-213643, Jan. 5, 1984, 84-1 CPD ¶ 55. We have numerous decisions considering the propriety of using brand name or equal specifications. See Julie Research Laboratories, Inc., B-218598, Aug. 20, 1985, 85-2 CPD ¶ \_\_\_\_; Superior Boiler Works, Inc., B-216472, Mar. 25, 1985, 85-1 CPD ¶ 342. We also have issued numerous decisions in which we considered the allegation that specifications in a particular solicitation overstate the agency's minimum needs. See U.S. Polycon Corp., B-216185, Dec. 27, 1984, 84-2 CPD ¶ 708; Caelter Industries, Inc., B-215427, Dec. 3, 1984, 84-2 CPD ¶ 601. Thus, while we recognize the importance of these matters to the protester, we do not consider these issues significant as that term is used in our Bid Protest Regulations.

Finally, Julie contends that our timeliness rules are merely a "dodge" so that we can avoid our responsibility to review protests. Julie raised this same point

in Julie Research Laboratories, Inc., B-219364, Aug. 23, 1985, 85-2 CPD ¶ \_\_\_\_\_. As we pointed out in that case, our regulations are designed to provide all parties a fair opportunity to present their cases and to permit a reasonably speedy resolution of these matters without unduly disrupting the government's procurement process, International Development Institute, B-218048.2, Feb. 11, 1985, 85-1 CPD ¶ 179, and are intended to enable our Office or the contracting agency to decide an issue while it is still practicable to take effective action where the circumstances warrant. Dynamics Research Corp., B-213273, Dec. 28, 1983, 84-1 CPD ¶ 33. Here, a protest before the date for receipt of initial proposals would have permitted review and, if the protest had merit, possible corrective action before offerors had undergone the expense of preparing proposals. In short, the timeliness rules serve an important and valid purpose, and had Julie complied with them, its protests would have received full consideration.

The protests are dismissed.

  
Ronald Berger  
Deputy Associate  
General Counsel